

STATEMENT OF FACTS

Your affiant, Carmen Dvorak de Morales, is a Special Agent assigned to the Philadelphia Field Office Allentown Resident Agency. As a Special Agent, I investigate violations of the laws of the United States and collect evidence in cases in which the United States is or may be a party in interest. Currently, I am tasked with investigating criminal activity in and around the United States Capitol grounds on January 6, 2021. As a Special Agent I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of violations of Federal criminal laws.

The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification were allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly around 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

On or about January 22, 2021, an individual who identified himself as Samuel Fontanez (Fontanez) called the FBI National Threat Operations Center (NTOC). In a recorded phone call, Fontanez stated that his date of birth was XX/XX/1988, and his phone number was XXX-XXX-9563 (9563). Fontanez stated that he resides in the Commonwealth of Pennsylvania and in zip code 18049. Fontanez further stated that he called to clear his name surrounding the events at the U.S. Capitol building in Washington, D.C. on January 6, 2021. Fontanez further stated that he was at the U.S. Capitol building on January 6, 2021, and he was exposed to tear gas and smoke bombs. Fontanez stated he was in the area of the U.S. Capitol building from approximately 2:05 p.m. to 2:22 p.m. Fontanez stated he entered the Capitol building for a short period of time. After he exited the building, he turned around and took a photograph of the Capitol building.

On or about January 25, 2021, the affiant called the cell phone number provided by Fontanez to the FBI ending in 9563. Fontanez answered the phone and confirmed he was the same person who called the FBI on or about January 22, 2021. Fontanez stated that he was present in the crowd at the U.S. Capitol building in Washington, D.C. on January 6, 2021, and that he was tear-gassed and smoke-bombed. Fontanez stated he was inside the Capitol building for a short period of time. Fontanez related that he exited the Capitol building and entered a ride-share car. Fontanez stated that he lives in Emmaus, Pennsylvania.

On or about January 29, 2021, in response to legal process for phone number 9563, AT&T provided documentation for phone number 9563. The registered account holder for phone number 9563 was "Samuel Fontanez Rodriguez." The phone number was associated with an Apple iPhone XS mobile device.

According to records obtained through a search warrant which was served on AT&T on January 6, 2021, in and around the time of the incident, the cellphone associated 9563 was identified as having utilized a cell site consistent with providing service to a geographic area that includes the interior of the United States Capitol building.

In January 2021, FBI personnel conducted database searches through the Pennsylvania Department of Transportation and Accurint which identified a "Samuel Fontanez Rodriguez," with a birthdate of XX/XX/1988, residing at an address in Emmaus, Pennsylvania, zip code 18049.

On or about January 18, 2021, FBI Special Agents of the Philadelphia Division- Allentown RA interviewed Jackson Kostolsky¹. Kostolsky related he traveled to the U.S. Capitol building in Washington, D.C. on January 6, 2021 with a group of friends and he entered the U.S. Capitol building through an open door. Kostolsky related that after he left the U.S. Capitol, he met with friends at a parking garage as they were separated during the day. Kostolsky showed the Special

¹ Kostolsky was charged for offenses occurring January 6, 2021, in Washington, D.C.

Agent photographs on his cellular phone from outside of the U.S. Capitol building on January 6, 2021.

On or about January 20, 2021, a search warrant for Kostolsky's cell phone was approved by the Hon. Henry S. Perkin, United States Magistrate Judge for the Eastern District of Pennsylvania, and subsequently executed on January 22, 2021. During the execution of the search warrant for Kostolsky's cell phone, Kostolsky stated to an FBI Special Agent that he traveled to the U.S. Capitol with "Sam Fontanez," and that Fontanez's phone number is XXX-XXX-9563. Subsequent analysis of the cell phone data revealed the telephone number 9563 was listed in Kostolsky's phone contacts as "New Sammy Dose."

On or about February 26, 2021, Kostolsky was interviewed by FBI Special Agents, including myself. During the interview, Kostolsky identified himself as the person wearing the leopard print vest in a photograph on the U.S. Capitol grounds on January 6, 2021 that was extracted from his cellular phone (*see* Figure 1). Kostolsky further stated that the person standing next to him in Figure 1 wearing a red beanie-style hat and black hoodie-style jacket looked like Fontanez and that the person in the photograph was wearing the same clothing Fontanez wore on January 6, 2021.

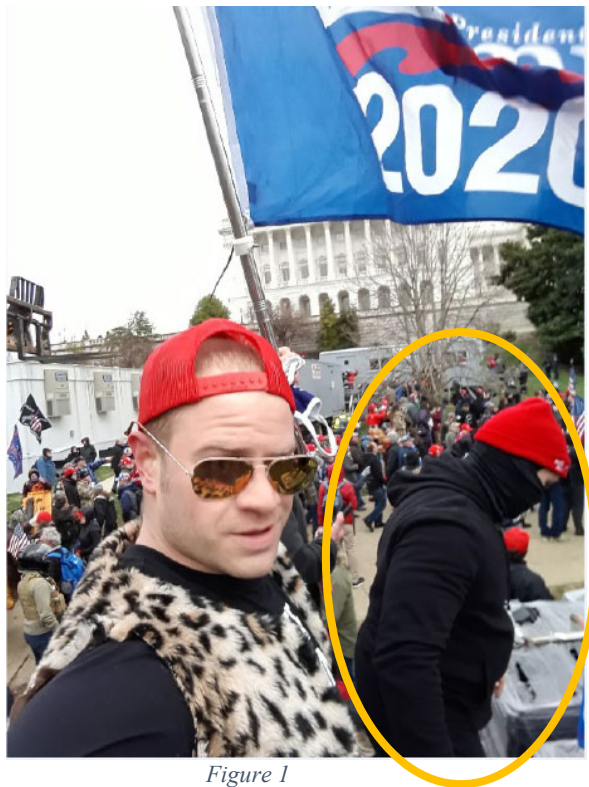


Figure 1

Kostolsky further identified Fontanez as the individual photographed with him on steps in Washington, D.C. on January 6, 2021 prior to arriving at the U.S. Capitol building, wearing a black backpack and the red baseball-style hat (*see* Figure 2).



Figure 2

In February 2021, I conducted a review of U.S. Capitol security camera footage. At approximately 2:15 p.m. Eastern Standard Time (EST) on January 6, 2021 a person believed to be Fontanez based on the individual's clothing appeared in the U.S. Capitol security camera footage. The individual is shown in subsequent video footage from Capitol security cameras. Still images from the security camera video (CCTV) are depicted below (*see* Figures 3 to 7).



Figure 3

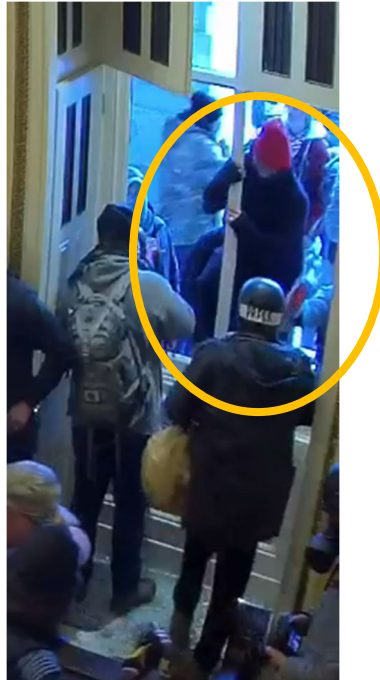


Figure 4



Figure 5

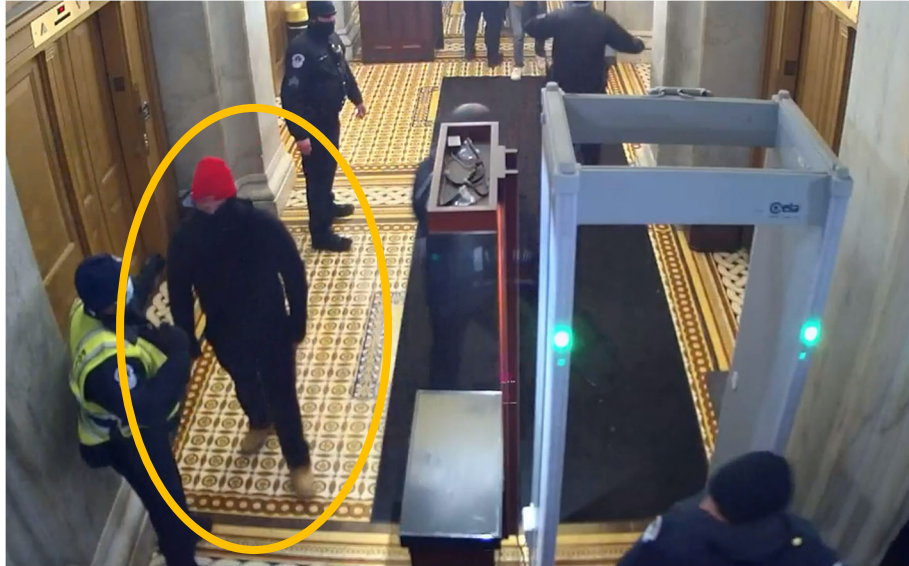


Figure 6



Figure 7

On or about March 9, 2021, a search warrant was signed by the Honorable Henry S. Perkin, U.S. Magistrate Judge for the Eastern District of Pennsylvania for the residence where Fontanez resided in Emmaus, Pennsylvania and Fontanez's cell phone with phone number 9563.

On or about March 19, 2021, the search warrant was executed at Fontanez's residence. Seized from the residence were a laptop computer, a hat, a black hooded sweatshirt, and a pair of tan boots. The cell phone associated with phone number 9563 was seized from Fontanez.

On or about March 19, 2021, Fontanez was interviewed by FBI Special Agents including the affiant. Fontanez acknowledged he previously had a conversation with the affiant over the phone and told her about his presence in the U.S. Capitol Building on January 6, 2021. Fontanez related that he traveled to Washington D.C. with Kostolsky and others. Fontanez related they walked to the U.S. Capitol building and he lost his friends including Kostolsky. Fontanez related he was in the Capitol building for a short period of time and he does not recall his path through the building. Fontanez related he walked near a metal detector. Fontanez related he took a photograph of the Capitol building at approximately 2:22 p.m. Then he got an Uber at approximately 2:43 p.m. Fontanez related he lost the red beanie-style hat and the black balaclava style face mask he was wearing inside the Capitol building. Fontanez pointed to a tan pair of boots located near the front door of his residence and related that those were the boots he wore while inside the Capitol building. The boots appear in size, color, and shape to match those worn in the CCTV. Fontanez related the cell phone seized from him was the same phone he had with him in Washington D.C. on January 6, 2021.

Subsequently, pursuant to the signed search warrant, Fontanez's cell phone was searched by the FBI. Analysis of the cell phone data revealed that on January 6, 2021, Fontanez's cell phone number 9563 transmitted text messages to Kostolsky's cell phone. These messages included the following photographs (*see* Figure 8-10).



Figure 8



Figure 9



Figure 10

On January 7, 2021, phone number 9563 sent a text message containing a website address link to a New York Times article at <https://www.nytimes.com/2021/01/07/world/europe/macron-merkel-trump-capitol-democracy.html> discussing the riots at the U.S. Capitol on January 6, 2021. 9563 also sent a text message which stated, "Flower got CNN. We got NYT." The article contained the image contained below (*see* Figure 11).



Figure 11

Based on the foregoing, your affiant submits that there is probable cause to believe that Samuel Fontanez Rodriguez violated 18 U.S.C. § 1752(a)(1) and (2), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do so; and (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; or attempts or conspires to do so. For purposes of Section 1752 of Title 18, a “restricted building” includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Your affiant submits there is also probable cause to believe that Samuel Fontanez Rodriguez violated 40 U.S.C. § 5104(e)(2)(D) and (G), which makes it a crime to willfully and knowingly (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress and (G) parade, demonstrate, or picket in any of the Capitol Buildings.

Carmen Dvorak De Morales

Carmen Dvorak De Morales
Special Agent
Federal Bureau Of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1
by telephone, this 6th day of July, 2022.

HONORABLE G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE